



Comptroller General
of the United States
Washington, D.C. 20548

234181

Decision

Matter of: Channel Islands Aviation
File: B-258404
Date: January 18, 1995

DECISION

Channel Islands Aviation (CIA) protests the award of a fixed-price requirements contract to Air Lease, Inc. under request for proposals (RFP) No. N68936-94-R-0080, issued by the Department of the Navy for leasing light aircraft to transport military and contractor support personnel.

We dismiss the protest.

The RFP was issued on an unrestricted basis and required the submission of technical proposals demonstrating that a prospective contractor had a thorough knowledge and understanding of the government's requirements and describing in detail the aircraft proposed to meet the government's requirements. Award was to be made to the offeror submitting the low priced, technically acceptable offer.

Four offers were received. On March 28, CIA was informed that its offer had been rejected because it did not submit a technical proposal. Two other offers were eliminated from the competitive range because their prices were high. Air Lease's proposal was found to be unacceptable but capable of being made acceptable. Discussions were held and, based on the firm's best and final offer (BAFO), Air Lease was awarded a contract on April 19.

On April 26, CIA requested and obtained a description of the aircraft offered by Air Lease. On April 27, CIA protested the award to the agency maintaining that, based on its knowledge of the technical capabilities of the equipment in question, the aircraft offered by Air Lease did not meet certain performance requirements in the RFP. CIA also requested a copy of Air Lease's proposal under the Freedom of Information Act (FOIA).

In an exchange of correspondence following the agency-level protest, the Navy addressed CIA's substantive concerns and dismissed the protest. The final correspondence in this exchange was dated June 20.

062033/153440

153440 FILE - 22074

On August 23, CIA received a copy of Air Lease's initial proposal pursuant to its FOIA request. On September 2, CIA filed this protest with our Office alleging that Air Lease's proposal was technically unacceptable and requesting that a new competition be ordered.

At the outset, we note that CIA does not protest the elimination of its proposal from the competitive range, apparently conceding that the Navy had a reasonable basis for rejecting the offer for failure to contain a technical proposal.¹ We also note that part of CIA's protest here continues its challenge to the award on the basis that Air Lease's aircraft do not meet the performance requirements set forth in the RFP. This aspect of the protest is dismissed as untimely. CIA knew which aircraft the awardee proposed on April 26 and received a final decision on its agency-level protest on June 20. Under 4 C.F.R. § 21.2(c) (3), CIA had 10 working days from June 20 to file its protest in this Office; since the firm waited until September 2, these allegations are dismissed as untimely.²

Further, in its October 24 comments on the agency report, for the first time, the protester stated that "although it is CIA's hope that this is not the case, CIA is informed and believes that a conflict of interest may exist between. . . [the Navy] and Air Lease, by the fact that at the time of award, the daughter of a woman who worked in the Contracting Officer's office was employed by AVEX, Inc., an associate company of Air Lease." CIA requests that we investigate this allegation.

Our Regulations provide that a protester is obligated to include in its protest all the information establishing the timeliness of the protest. 4 C.F.R. § 21.2(b). The record discloses that, during the course of its agency-level protest, CIA knew of the relationship between AVEX and Air Lease. Nonetheless, CIA's October 24 letter, which raised this issue for the first time, provided no evidence showing that it received information that formed this basis of its

¹Such a protest would be untimely in any event since CIA knew the basis for the rejection of its proposal on March 28 and did not file a protest within 10 working days thereafter as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2) (1994).

²The protester also alleges that the awardee's proposal was technically deficient because Air Lease failed to state whether its aircraft had retractable landing gear, a supplementary oxygen system, and over water capability. These omissions were the subject of discussions with Air Lease and were successfully resolved in its BAFO.

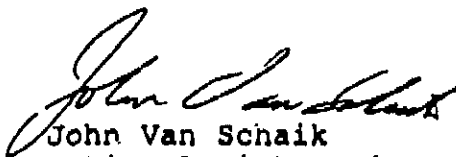
protest no more than 10 working days prior to October 24. Accordingly, we dismiss the allegation. CardioMetrix--Recon., B-255656.2, Apr. 11, 1994, 94-1 CPD ¶ 249.³

CIA's other allegations are dismissed for the reasons set forth in the following analysis

The protester alleges that Air Lease failed to complete a small business size certification and, on information and belief, the firm is not a woman-owned small business. These matters are legally irrelevant to the acceptability of the offer since the RFP was not set-aside for small business and no preference for woman-owned small businesses was used in making the award. In these regards, CIA has failed to state a valid legal basis of protest and the allegations are dismissed. 4 C.F.R. § 21.3(m).⁴

CIA also alleges that Air Lease does not have authority to operate in California, that it has not developed an affirmative action plan, that it is performing the contract with substandard aircraft not listed in its proposal, that it is overcharging the government and that it is using facilities which do not meet RFP requirements. All of these allegations are either matters of contract administration which we do not consider, 4 C.F.R. § 21.3(m) (1) or bear upon the agency's affirmative determination that Air Lease was responsible--a matter which we will not consider absent circumstances not here present. 4 C.F.R. § 21.3(m) (5).

The protest is dismissed.



John Van Schaik
Acting Assistant General Counsel

³In any event, we do not conduct investigations as part of our bid protest function. Stabro Labs., Inc., B-256921, Aug. 8, 1994, 94-2 CPD ¶ 66.

⁴Likewise, CIA alleges that the person who signed the awardee's offer on February 7 as a company director was not authorized to do so because he was not a director or officer. In support of this proposition, CIA submitted corporate filings dated 2 months after the submission of the offer which do not list the individual who signed the offer as a director or officer at that time. We contacted Air Lease's owners who confirmed that the individual in question was a director on February 7, when the offer was signed.